

MAY 23 2006

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)

) MUR 5657

David Wittig and Douglas Lake)

SENSITIVE

GENERAL COUNSEL'S REPORT # 2

I. ACTIONS RECOMMENDED: Admonishment, take no further action, and close the file.

II. BACKGROUND

This matter was generated as a result of a sua sponte submission by Westar Energy, Inc., an electric utility company headquartered in Topeka, Kansas. Westar provided information that several former executives and an outside lobbyist had facilitated contributions to federal candidate committees on behalf of Westar.

Based on the information provided in the submission, the Commission found reason to believe that Westar and four Westar executives, David Wittig, Douglas Lake, Carl M. Koupal, Jr., and Douglass Lawrence, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) of the Federal Election Campaign Act of 1971, as amended ("the Act"). See MUR 5573. The Commission also found that Westar's outside lobbyists, Governmental Strategies, Inc. ("GSI") and Richard Bornemann, violated 11 C.F.R § 114.2(f)

The Commission ultimately accepted separate conciliation agreements with Westar, Koupal, Lawrence, and Bornemann in connection with the prohibited facilitation and took no further action as to GSI. See *id.* the Commission severed Wittig and Lake from MUR 5573, opened MUR 5657 as to them, and authorized this Office to conduct an investigation.

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1 During the same time period that our investigations into Westar and Wittig/Lake were
2 ongoing, Wittig and Lake were being prosecuted by the U.S. Attorney's Office in Kansas on
3 multiple counts of corporate wrongdoing while at Westar. Wittig and Lake's first trial ended in
4 December 2004 because the jury failed to reach a unanimous verdict. The retrial started in June
5 2005, and, on September 12, 2005, a jury convicted Wittig on 39 of 40 counts and Lake on 30.

6 On September 1, 2005, this Office served Wittig and Lake General Counsel's Briefs to
7 their counsel. After Wittig and Lake submitted short responses denying liability, the
8 Commission found probable cause to believe that Wittig and Lake violated the Act. *See* First
9 General Counsel's Report, MUR 5657.

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12 At the sentencing, Wittig received 18 years' incarceration and was ordered to pay a \$5
13 million fine and restitution of more than \$14 million and forfeit other property, including an
14 insurance policy and signing bonus, valued by the Court at nearly \$30 million. Lake received 15
15 years' incarceration and was ordered to pay fines and restitution of almost \$8 million. At this
16 time, Wittig is already in prison. On May 12, Lake, previously scheduled to report to prison on
17 May 15, was granted bail pending appeal by the 10th Circuit.

18 **III. DISCUSSION**

19 **A. Wittig**

20 Prior to the April 2006 sentencing, Wittig was imprisoned in January 2006 because he
21 engaged in several post-verdict financial transactions that violated a Court order. After the April
22 3 sentencing, we attempted to contact Wittig's attorneys, who we learned had moved to a new
23 law firm. Because of the switch to a new firm and the fact that prison regulations required all

1 contact with Wittig to take place through his wife, negotiations did not go far. When his
2 attorneys attempted to contact him, they found out that Wittig
3 was in transit between prisons and would be out of reach for some time. The attorneys were able
4 to tell us, however, that Wittig would not be able to pay any civil penalty.

5
6 In light of the harsh criminal sentence he received, his current financial condition, and the
7 difficulty in communicating with him, engaging in further proceedings with Wittig, including
8 potential litigation, would not be a good use of Commission resources. We, therefore,
9 recommend that the Commission admonish Wittig, take no further action, and close the file as to
10 him.

11 **B. Lake**

12 We communicated with Lake's attorney post-sentencing.

13
14 however, in light of our recommendation as to Wittig, arguably the more
15 culpable of the two, it seems appropriate to treat them in the same manner. Thus, we recommend
16 that the Commission admonish Lake, take no further action, and close the file as to him.

IV. RECOMMENDATIONS

1. Admonish David Wittig and Douglas Lake and take no further action.
2. Approve the appropriate letters.
3. Close the file in MUR 5657.

5/23/06
Date

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